

PUBLIC LAW BOARD NO. 7544

**Brotherhood of Maintenance of Way
Employees Division - IBT
Rail Conference**

and

SOO Line Railroad Company (CP)

Case No. 18
Award No. 18
System File No. D-22-15-445-04

Background

On April 16, 2015 the Carrier issued to Claimant G. Williams a notice of formal investigation stating as follows:

"The purpose of the investigation and hearing is to develop all facts and circumstances and place responsibility, if any, for your alleged operating a company vehicle while using a handheld cell phone on Tuesday, April 14th, 2015.

GCOR Rule 2.21 – Electronic Devices
Engineering Safety Rule Book E2 Vehicles Used for Company Business”

On April 30, 2015 the formal investigation and hearing convened wherein Claimant and his representative were afforded the opportunity to present testimony and other evidence as well as examine the Carrier's witness and three (3) exhibits.

On May 15, 2015 the Director of Track Issued to Claimant a discipline assessment letter stating that "testimony presented in the investigation/hearing indicates that you were in violation of" GCOR Rule 2.21 Electronic Devices and Engineering Safety Rule Book E2 Vehicles Used for Company Business. The Director assessed Claimant a thirty (30) day actual working day suspension.

On May 21, 2015 the Organization and the Carrier agreed to progress Claimant's discipline dispute for resolution before this Board "utilizing the abbreviated procedure provided for in Paragraph (K) of [the] PLB Agreement."

Findings

Public Law Board No. 7544, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

Consistent with the PLB Agreement for this Board, the evidentiary record in this proceeding is comprised of the following: (i) notice of investigation, (ii) transcript of the investigation and all related exhibits, (iii) discipline assessment letter and (iv) on-property correspondence related to progression of the claim. Within this evidentiary framework defined by the parties, the Board renders these findings.

Claimant acknowledged answering his Carrier-issued cell phone and holding it in his hand while operating a Carrier vehicle on April 14, 2015. Claimant acknowledged he was distracted about work matters prior to answering the cell phone. Claimant further acknowledged he is aware of the Carrier's rules prohibiting use of handheld electronic devices when operating a Carrier vehicle. The Board finds there is substantial evidence that Claimant violated the rules as charged.

BMWE states Claimant reacted -- answered cell phone -- without thinking but terminated the call after thirty-nine (39) seconds as he recognized the rules prohibition on use of handheld electronic devices while operating a Carrier vehicle. Under the progressive discipline policy, this incident is a coaching opportunity for the Carrier to engage the Claimant in a conversation about his understanding of the rules. In considering the Organization's argument to reduce the discipline to coaching, this Board recognizes that safety is priority one in rail operations and distractions, such as a 39-second cell phone conversation, imperil safety of Claimant and others (co-workers and general public). The Board also notes that Claimant acknowledges he already was distracted while operating the Carrier's vehicle prior to his answering his cell phone. Claimant compounded his distraction with another distraction. Since there is substantial evidence of a rules violations, Claimant was aware of the rules and the penalty imposed is within the range of reasonableness for such violations, the Board will not disturb the discipline.

Award

Claim denied.


Patrick Halter
Neutral Member

Dated on this 28th day of
November, 2016